

CITY COUNCIL MEETING
June 5, 1991

QUESTIONS POSED REGARDING
SCHEDULED STREET WORK PROJECTS

CC-6

Council Member Pennino indicated that he is aware that overlays are being done on certain streets in Lodi and asked the Public Works Director if like work has been scheduled for Iodi Avenue, east of the railroad tracks. The Public Works Director indicated that he will check the schedule and report back on the matter.

MEMORANDUM, City of Lodi , Public Works Department

TO: City Manager
City Council

FROM: Public Works Director

DATE: July 9, 1991

SUBJECT: Lodi Avenue Street Improvements

At the Council meeting of June 5, 1991, Councilmember Pennino asked if any street improvement work was scheduled on Lodi Avenue west of the railroad tracks. This memo is responding to that inquiry.

In the 1988/89 Street Capital Improvement Program (CIP), \$10,000 was budgeted for preliminary engineering on Lodi Avenue between Main Street and Cherokee Lane. In the 1989/90 CIP, \$142,000 was budgeted for an overlay. Copies of the 1988/89 and 1989/90 CIPs are attached as Exhibit A and Exhibit B.

In order for this overlay project to be completed, the Central California Traction Company was requested to raise their tracks which are located in the center of Lodi Avenue. After much correspondence and a number of field meetings with Central California Traction Company and their parent companies, Central California Traction Company took the position that they did not have a problem with the existing condition of their facilities. They indicated unless they were under a franchise agreement **which** required them to re-do the tracks, their position was that they would do nothing. Attached as Exhibits C and D are memos from the Assistant City Engineer and the City Attorney which discuss the problems with the franchise agreement. The only franchise agreement which can be found is a 1905 County ordinance allowing Central California Traction to use Lodi Ave. (and other streets). Since the railroad tracks traverse the centerline of the street, this is not considered a street crossing under the definitions of the Public Utilities Commission (PUC). Therefore, the PUC general orders requiring track maintenance do not govern.

Because of the problems experienced in obtaining the cooperation of Central California Traction Company, the dollars budgeted for the actual paving of Lodi Avenue were removed from the Street CIP in 1990/91. However, the money for preliminary engineering **has** continued to be carried forward annually. Some surveying work has been done on this project.

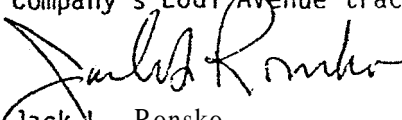
The City of Lodi performs an annual condition survey of all railroad crossings and railroad tracks within our public right-of-way. Attached as Exhibit E is a survey dated February 8, 1988. In 1988, the surveys were being done twice a year, however, we have since changed to an annual survey. This 1988 condition survey rated Lodi Avenue within the subject limits as "fair condition". It **was** noted that the rails had settled and the pavement was raised around the rails. Since 1988, the condition of

City Manager
July 9, 1991
Page 2

the Central California Traction Company tracks has worsened. Attached as Exhibit F *is* the January 1991 condition survey showing the condition as "hazardous". In the calendar year 1991, the City has received two liability claims related to the condition of the Central California Traction Company tracks in Lodi Avenue.

Because of *the* 1991 annual condition report, the recent liability claims against the City, and the concern of Councilmember Pennino, we have worked with the City Attorney and formulated the letter to Central California fraction Company attached as Exhibit G.

Since the subject tracks serve one of the City's larger employers, Pacific Coast Producers, and since these tracks will ultimately have to be relocated to construct any future grade crossing separation at Lodi Avenue, and since we understand Southern Pacific is contemplating the abandonment of the Kentucky Branch line which runs parallel to Lockeford Street which could serve as an alternate to the tracks in Lodi Avenue, it *is* recommended that this subject be discussed at a future shirtsleeve session. **This** item could then be agendized so **we** could receive the appropriate direction from the City Council on Central California Traction Company's Lodi Avenue tracks.


Jack L. Ronsko
Public Works Director
JLR/mt

Attachments

PROJECT DESCRIPTION	COST July 1988	REMARKS AND FUNDING
° MISCELLANEOUS WIDENING	50,000	
° MISC. CURB & GUTTER PROJECTS	15,000	
° SIDEWALK UPGRADING	50,000	
° HANDICAPPED RAMP INSTALLATIONS (various locations)	15,000	
° TRAFFIC OPERATIONAL IMPROVEMENTS		
1. Miscellaneous	20,000	
2. Stockton Street at Hwy 12 Left Turn Phase	7,000	\$7,000 State of California will be lead agency (modify existing signal).
° TRAFFIC SIGNAL IMPROVEMENTS		
1. Lower Sacramento Road/Lodi Avenue	90,000	
2. Lower Sacramento Road/Elm Street	80,000	
° WIDENING/RECONSTRUCTION PROJECTS		
1. HUTCHINS STREET		
a. Tokay - Lodi (Construction)	241,000	
b. Lodi - Pine (Pre-Engineering)	10,000	
2. LODI AVENUE		
Lodi - 700' E/Cluff - Guild (S side)	53,000	City responsible for improving south side of Lodi Avenue. Work to be done in conjunction with developer improvements.
3. LOWER SACRAMENTO ROAD		
Operational Improvements, St. Moritz - Turner	158,000	Auxiliary lanes at intersections only (in conjunction with signals).
° ASPHALT OVERLAYS		
1. PINE STREET - SPRR to Cherokee	223,000	Curb and gutter work included to save trees.
2. LODI AVENUE - Main to Cherokee Engineering Only	10,000	Project in conjunction with OCT RR rehab.
3. CHURCH STREET - Kettlerman to 100' S/Mendocino	71,000	
4. HARNEY LANE - Hutchins to SPRR	48,000	
SPRR to 400' W/Stockton Street	27,000	
5. LOCKEFORD STREET - SPRR to Stockton Street	26,000	
Stockton Street to Cherokee	89,000	
° MISCELLANEOUS PROJECTS		
1. OVERLAY ANALYSIS/DESIGN	5,000	
2. TOKAY FENCE, GATE AND PLANTER REPAIR AT WID CROSSING	7,000	
° RAILROAD CROSSING APPROACH IMPROVEMENTS		
1. Loma Drive	8,000	Design budgeted 1986-87.
2. California Street	4,000	
TOTAL	1,307,000	

Streets - 1989/90 Capital Improvement Program City of Lodi - Public Works Department

Project	Cost in		Work In		Remarks	Account #
	Jul-89	Progress	89-90			
Miscellaneous Widening	50,000/yr	3,166	50			33.0-500.01
Misc. Curb & Gutter Replacements	15,000/yr		15			33.0-500.03
Sidewalk Replacements	50,000/yr		50			33.0/12S.0-500.04
Handicapped Aamp Installations	5,000/yr		5			33.0-500.05
Traffic Operational Improvements						
1. Miscellaneous	15,000	13,932	15			33.0-500.17
2. Stockton St @ Hwy 12 LT phase		845		Project completed, Cal Trans to closeout		33.0-500.20
3. Church St Coordination Impr.	52,000			52 Convert signals to traffic actuation		33.0-500.33
Traffic Signals				Listed in order per 1987 Priority Study		
1 Victor/Cluff		89,826		Waiting for RR to install xing protection first		33.0/126.0-500.88
2 Lwr. Sacramento/Lodi		90,000				126.0-500.96
3 Lwr. Sacramento/Elm		80,000				126.0-500.97
Street Widening Projects						
1. Hutchins Street						
a. Tokay to Lodi		361,593		Widening on east side 1/2 blk S/Lodi only		124.0-500.75
b. Lodi to Pine				Project adopted in 1962 included some		
Preliminary Engineering		9,953		widening S/Walnut, not to General Plan width		124.0-500.99
Right-of-Way (W. side S/Walnut)	66,000		66			124.0-500.99
2. Church Street - Century to Kettleman				Widening only along unimproved section on west side		
Right-of-Way (1700 bik)	35,000		35			33.0-500.34
Reconstruction	250,000		100			124.0-500.34
CG&SWK 1700 block	8,000		8			124.0-500.34
CG&SWK 1900 block	8,000		8			124.0-500.34
3. Lodi/Guid @ Griffin industrial Park		127,285		City responsible for E. side of Guid & S.		32.0/33.0-500.21
4. Lower Sacramento Road						
a. Preliminary Engineering		5,271				124.0-500.86
b. Operational Improvements		158,000		Turn lanes only (w/signals @ Lodi, Elm)		124.0/126.0-500.22
Pavement Rehabilitation Projects						
1. Stockton Street				Estimate is for type of rehab. indicated and		
Lodi to Lockeford, overlay	176,000		176	may vary w/final design		125.1-500.35
2. Fine Street						
a. SPAR to Cherokee. overlay		220,275				124.0-500.23
3. Lodi/Ham Intersection, overlay	19,000		19			124.0-500.37
2 Lodi Avenue						
a. Preliminary Engineering		10,000				33.0-500.24
b. Main to Central. overlay	142,000		142			124.0-500.38
c. Beckman to Kelly, overlay	25,000		25			124.0-500.39
5. Churon Street-Hwy 12 to 100'S/Mendocino overlay		70,952		to be deleted		124.0-500.25
6. Harney Lane-Hutchins to 400' W/Stkn, overlay		89,981				124.0-500.26/27
7. Lockeford Street						
SPAR to Cherokee overlay		114,991				32.0-500.28/29
8. Cherokee Lane						
@ Kettleman approaches	50,000			60 Reconstruct LT & thru lanes @ intersection		33.0-500.40
9. Ham Cane Hwy 12 to Vine. overlay		216,420		Includes minor widening	33.0/124.0/126.0-500.91/32.0-500.94	
10. Pacific Ave - Walnut to Pacific; Walnut St &		94,804		@ MSC driveway & parking lot		33.0/124.0-500.90

Memorandum: City of Lodi Public Works Department. Engineering Division

To: City Attorney

DEC 2 '88

From: Assistant City Engineer

City Attorney's Office

Date: December 2, 1988

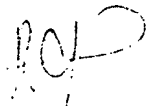
Subject: Central California Traction Franchise/E. Lodi Ave.

As we discussed earlier, we have a problem with the condition of the CCT tracks in the center of E. Lodi Ave. We wish to overlay the street in a year or so and their tracks are wavy and below grade. They should be reconstructed to a straight and higher grade similar to what the SPT Co. did on Lockford St. in conjunction with our rehab of the street a few years ago.

We met w/CCT and representatives of their parent companies - their comment was that they didn't have a problem with the condition and unless they were under a franchise which required them to redo the tracks on our request, they wouldn't do anything.

I and the City Clerk have searched the files for franchise documents and all we can find is the attached 1905 San Joaquin County ordinance #314 which grants them a 50 year franchise. (E. Lodi Ave was in the County then) It appears the franchise was never renewed although there are some modifications that were approved such as the attached City Ordinance #185.

Our question is, how should we proceed to get them to agree to fixing the tracks in conjunction with our project?



Richard

cc GB/JLR

MEMORANDUM

To: Richard Prima, Assistant City Engineer

From: Bob McNatt, City Attorney

Date: December 8, 1988

Re: Central California Traction Franchise/East Lodi Avenue

The resolution to the problem we are experiencing with Central California Traction's franchise on Lodi Avenue is not going to be resolved as quickly and easily as I first thought. When I read the Ordinance of San Joaquin County, granting CCT a franchise in 1905, I was encouraged to note that it had a term certain of 50 years specified in the Ordinance. There is a case precisely on point, Mann v. City of Bakersfield (1961) 13 Cal.Rptr. 211, which says that upon expiration of a franchise to lay and maintain railroad tracks upon city streets, the city may require the railroad to remove its tracks and may enjoin its continued use of the streets as a public nuisance. This was backed up by a long line of cases such as Vanderhurst v. Tholcke 113 Cal. 147, and suggested that we simply had to declare, as successors in interest to the County, that the franchise had expired and we could then move the tracks off of the street if CCT was uncooperative.

However, my enthusiasm was dampened when I read further into City of Lodi Ordinance No. 185 adopted in 1931. I believe the effect of this Ordinance is not to extend San Joaquin County's franchise, but to grant an entirely new franchise for "... such term, period and length of time as shall meet with the pleasure of the City Council ...". Under these circumstances where no time for expiration is specified, we are under an obligation to deal at arm's length with the Railroad and not arbitrarily to simply evict them from our street. Since the Ordinance contains no expiration date, the provisions of Public Utilities Code §6460, specifying that franchises shall be of an indeterminate period if no time is specified, probably applies. The result is a continuing franchise.

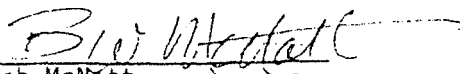
I note that Ordinance 185 in section FIRST specifies that the Railroad must, maintain its roadbeds and tracks "... to the official grade of a?? streets ...", and further that section THIRD of the Ordinance is required to keep "... said rails, in good repair, and shall grade or regrade ... the same with such material as shall be satisfactory to the City Council ...".

This suggests to me that we have to first tell the Railroad we plan to regrade the street and offer them the opportunity to do likewise with their rails. Should they fail to do so, the Council can then indicate to the Railroad its intent to declare the "franchise" (although that word is never used in Ordinance 185) forfeit under the terms of the Ordinance, which specify that the right to operate the Railroad is "... subject to the terms and conditions hereinafter made and expressed ...". This would apparently protect the railroad's due process rights.

Richard Prima, Assistant City Engineer
Page Two

Incidentally, I spoke with Ed Thurban, area engineer for the California Public Utilities Commission, Rail Safety Division, telephone (415) 557-0534, who explained that he had been involved in the previous situation on Tokeford Street, and it was his opinion that this involved a "gray area", since the PUC has jurisdictions at crossings, but not in streets. I had at first contemplated asking the PUC for assistance in this matter, but that does not appear to be an option at this point.

Please let me know if you would like to set up a meeting with CCT to present our position.


Bob McNatt
City Attorney

BM:vc

CENTTRAC/TXTA.01V

CITY COUNCIL

EVELYN M. OLSON, Mayor
JOHN R. (Randy) SNIDER
Mayor Pro Tempore
DAVID M. HINCHMAN
JAMES W. PINKERTON, Jr.
FRED M. REID

CITY OF LODI

CITY HALL, 221 WEST PINE STREET
CALL BOX 3006
LODI, CALIFORNIA 95241-1910
(209) 334-5634
TELECOPIER (209) 333-6795

THOMAS A. PETERSON
City Manager
ALICE M. REIMCHE
City Clerk
RONALD M. STEIN
City Attorney

February 8, 1988

Central California Traction Company
1645 Cherokee Road
Stockton, CA 95205

Attention Mr. Melish

Gentlemen:

SUBJECT: Railroad Crossings and Branch Line Within the City of Lodi

The semi-annual survey of Central California Traction Company railroad crossings and branch line within the City of Lodi has been completed. A report of our findings is enclosed.

Please note that six areas are in a hazardous condition and should be repaired immediately. The enclosed photographs of the crossing and branch line showing the hazards are listed in the report. Any or all conditions could contribute to a major accident, damage or injury to motor vehicles, motorcyclists or bicyclists.

The Main Street crossing and branch line extending from Main Street to Cherokee Lane has numerous chuck holes and settled tracks that cause water to pond. Ponding of the water within the track area has caused chuck holes and pavement failure adjacent to and outside of the track area. Lodi Avenue between Main Street and Cherokee Lane will require an overlay in 1989. It is important that the City of Lodi and Central California Traction Company coordinate a joint venture to renovate the tracks and overlay the street at the same time.

Please contact me within 30 days in order that a field review of the listed deficiencies can be made and the repair schedule discussed. I can be contacted by calling (209) 333-6740.

Sincerely,


Glen C. Baltzer
Street Superintendent

GCB/s 1s

Enclosure

cc: Public Utilities Commission, Ed Thurban
Public Works Director, Jack L. Ronsko

CENTRAL CALIFORNIA TRACTION COMPANY RAILROAD CROSSINGS

CITY OF LODI

February 8, 1988

<u>LOCATION</u>	<u>NO. OF TRACKS</u>	<u>P.U.C. NO.</u>	<u>CONDITION</u>		
			<u>Good</u>	<u>Fair</u>	<u>Hazardous</u>
Tokay Street	1		X		
Lodi Avenue	1	61B-18C		X	
			Rail settled pavement raised		
Cherokee Lane	1	61B-1.0	X		
Pine Street	1	GI-13.3			
900 Blk E. Lodi Ave.	1		X		
1200 Blk E. Lodi Ave.	1		X		
Beckman Road	1	61B.0.75		X	
			Rails settled and pavement		
			raised next to rail		
Main Street southside	1				X
			Rails settled pavement low and-		
			raised next to track		
Main Street northside	1				

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MISCELLANEOUS

BRANCH LINE

LOCATION

CONDITION

Good

Fair

Hazardous

Main - Stockton

X
Chuck holes and rails settling
causing damage to street

Stockton - Washington

X
Chuck holes and rails settling
causing damage to street

Washington - Central

X
Chucks holes and rails settling
causing damage to street

Central - Garfield

X
Chuck holes and rails settling
causing damage to street

Garfield - Cherokee

X
Chuck holes and rails settling
causing damage to street

Exhibit F

CITY COUNCIL

DAVID M. HINCHMAN, Mayor
JAMES W. PINKERTON, Jr.
Mayor Pro Tempore
PHILLIP A. PENNINO
JACK A. SIEGLOCK
JOHN K. (Randy) SNIDER

CITY OF LODI

CITY HALL, 221 WEST PINE STREET
P.O. 30 X 3006
LODI, CALIFORNIA 95241-1910
(209) 334-5634
FAX (209) 333-6795

THOMAS A. PETERSON
City Manager
ALICE M. REIMCHE
City Clerk
806 McNATT
City Attorney

January 3, 1991

Central California Traction Company
Attention: Mr. Melish
1645 Cherokee Road
Stockton, CA 95205

SUBJECT: Railroad Crossings and Branch Line Within the City of
Lodi

The annual survey of the Central California Traction Company railroad crossings **and** branch line within the City of Lodi has been completed. A report of our findings is enclosed.


Please note that eight areas are in a hazardous condition and should be repaired immediately. The enclosed photographs of the crossings **and** branch line showing the hazards are listed in the report. Any or all conditions could contribute to a major accident, resulting in damage to vehicles and injury to motorists, motorcyclists or bicyclists.

The hazardous Main Street and Beckman Road crossings and the branch line extending from Main Street to Cherokee Lane **was** brought to your attention in our January 19, 1989 and January 8, 1990 report.

In our February 8, 1988 report, we requested that the City of Lodi and Central California Traction Company coordinate a joint venture to renovate the tracks and overlay the street on Lodi Avenue in 1989. On September 28, 1988, we met with you and representatives of the parent companies to discuss the joint venture project. To date, we **have not** had any response regarding the companies' intent.

Central California Traction Company
January 3, 1991
Page 2

Please contact me within 30 days in order that a field review of the hazards listed can be reviewed and the repair schedule discussed. I can be conducted by telephone at (209) 333-6740.


Glen C. Baitzer
Street Superintendent

GB/ts

Enclosure

cc: Public Utilities Commission, Mr. Ed Thurban w/enclosures
Public Works Director, Mr. Jack Ronsko w/enclosures

0191sr.C6

CENTRAL CALIFORNIA TRACTION COMPANY RAILROAD CROSSINGS
CITY OF LODI
JANUARY 3, 1991

<u>LOCATION</u>	<u>NO. OF TRACKS</u>	<u>P.U.C. NO.</u>	<u>CONDITION</u>		
			GOOD	FAIR	HAZARDOUS
Tokay Street	I		X		
Lodi Avenue		61B-18C			X Rail settled at pavement, chuckholes and raised pavement
Cherokee Lane	1	61B-1.0	X		
Pine Street	1	G1-13.3		X	Raised pavement at edge of roadway
900 Blk. E. Lodi Avenue	1		X		
1200 Blk. E. Lodi Avenue	1		X		
Eeckman Road	1	61B.0.75			X Rails settled and pave- ment raised next to rail
Main Street southside	1				X Hails and pavement settled and pavement raised next to rail.

CONTINUED ON NEXT PAGE

0191SR.05

MISCELLANEOUS - BRANCH LINE

<u>LOCATION</u>	<u>NO. OF TRACKS</u>	<u>P.U.C. NO.</u>	<u>CONDITION</u>		
			GOOD	FAIR	HAZARDOUS
Main - Stockton					X Raised pavement, chuck holes and rails settling causing damage to street
Stockton - Washington					X Raised pavement, chuck holes and rails settling causing damage to street
Washington - Central					X Raised pavement, chuck holes and rails settling causing damage to street
Central - Garfield					X Raised pavement, chuck holes and rails settling causing damage to street
Garfield - Cherokee					X Raised pavement, chuck holes and rails settling causing damage to street

0191SR.05

CITY COUNCIL

DAVID M HINCHMAN Mayor

JAMES W PINKERTON Jr
Mayor Pro Tempore

PHILLIP A PENNING

JACK A SIEGLOCK

JOHN R (Randy) SNIDER

CITY OF LODI

CITY HALL, 211 WEST PINE STREET

PO BOX 3006

LODI, CALIFORNIA 95241-1910

(209) 334-5634

FAX (209) 333-6795

July 10, 1991

Exhibit G

City Manager

ALICE M. REIMCHE

City Clerk

BOB McNATT

City Attorney

Central California Traction Company

Attention: Mr. Melish

1645 Cherokee Road

Stockton, CA 95205

SUBJECT: Lodi Avenue Street Improvements

The City of Lodi has written you a number of times regarding the condition of your railroad tracks in Lodi Avenue between Cherokee Lane and Main Street. You have not responded to these letters nor to the issues raised in our field meeting held on September 28, 1988 (see attached copies).

Specifically our complaints are:

1. The condition of tracks and the pavement adjacent to the rails is hazardous to the public.
2. The rest of the street is overdue for rehabilitation and the uneven grade and settlement of the tracks means that the rehabilitation project must be done concurrently or immediately after track rehabilitation.
3. Any track repair needs to be done in a "state of the art" manner with City approval to delay the need for future repairs.

At our September 28, 1988 meeting, a question was raised regarding the legal status of the tracks. You were going to research your records on this issue, although we have not heard from you on this. As we stated then, the original installation was done under the terms of a franchise ordinance with San Joaquin County (Ordinance #314, December 5, 1905). Subsequently, the street was annexed and there have been a number of agreements and ordinances which have modified the original franchise. They require that the railroad maintain the tracks in a condition acceptable to the City. One exception is a September 16, 1957 agreement under which tracks in Lodi Avenue west of Main Street were allowed to be abandoned in place and paved over by the City. You may wish to consider this as an option.

In any event, we need a response from you within 30 days in order to proceed with the project. Please contact Richard Prima, Assistant City Engineer, to set up a meeting to discuss scheduling the project. If you do

LCENTRA8/TXTW.02M

Central California Traction Company
July 10, 1991
Page 2

not respond, we will be forced to pursue legal action through the courts and/or the Public Utilities Commission, since the City has now been named in litigation related to the condition of the tracks.

A handwritten signature in black ink, appearing to read "BW McNatt", followed by a horizontal line.

Bob McNatt
City Attorney

BM/RCP/mt

Enclosures

cc: Public Works Director
Street Superintendent
Assistant City Engineer
California Public Utilities Commission, Art Aldridge